SUPREME COURT OF THE UNITED STATES.

No. 23.—October Term, 1921.

William Breiholz, Edward Korf, Joseph Stuart, et al., Plaintiffs in Error, *vs.* The Board of Supervisors of Pocahontas County, Iowa, et al.	In Error to the Supreme Court of the State of Iowa.

[November 7, 1921.]

Mr. Justice Clarke delivered the opinion of the Court.

Conformably to the statutes of the State, Drainage District No. 29 was organized in Pocahontas County, Iowa, in 1907, and a system of drainage, regularly planned, adopted and constructed, was completed in 1909. An assessment to pay for this improvement was imposed upon the lands within the District in proportion to the benefits which each tract would derive from it.

Two years later, in 1911, parts of the ditches having become so filled up as to impair the usefulness of the system, the County Board of Supervisors adopted a resolution declaring that it was expedient that the drainage improvement should be "re-opened, cleaned and otherwise repaired" for the better service of the land tributary to it, and to that end a contract was let to "deepen, clean, re-open and repair" the ditches in the parts and in a manner specified. An assessment to pay for this re-opening, cleaning and repairing was made upon the lands in the District in the same proportion to benefits as that made to pay for the original construction, and the controversy in this case is as to the constitutionality of the statute under which this assessment was levied upon the lands of the plaintiffs in error.

The state statutes (Supplement to the Code of Iowa, 1913, Ch. 2-A) committed to the Board of Supervisors of the County, the power to establish drainage districts, to adopt systems of drainage, to determine the extent of any damage which might be caused to lands thereby, and to make assessment on the lands in the District, in proportion to benefits, to pay for the improvement.

Elaborate provision is made for notice to all owners of land within a proposed drainage district, of the application for the establishment of it, of the time for hearing claims for damages likely to be caused by the construction of the drainage system, and of the time when objections may be made to the assessment in proportion to benefits. From the determination of the Board with respect to each of these a right of appeal to the state District Court is given.

It is admitted that all of the requisite action was taken to establish the system of drainage involved and for making the assessment upon the benefited lands, including those of the plaintiffs in error, to pay for the original work done, and that sufficient notice thereof to satisfy all constitutional requirements was given to all concerned.

The action in this case was taken under section 1989-a21 of the Iowa Code (Supplement, 1913) which provides that after any drainage district shall have been established and the improvement constructed (as in this case):

" . . . the same shall at all times be under the control and supervision of the board of supervisors, and it shall be the duty of the board to keep the same in repair and for that purpose they may cause the same to be enlarged, reopened, deepened, widened, straightened or lengthened for a better outlet." . . . "The cost of such repairs or change shall be paid by the board from the drainage fund of said . . . drainage district, or by assessing and levying the cost of such change or repair upon the lands in the same proportion that the original expenses and cost of construction were levied and assessed, except where additional right of way is required or additional lands affected thereby, in either of which cases the board shall proceed" giving notice and hearing as is otherwise provided.

It will be noted that the section thus quoted does not require that notice shall be given to landowners of such intended enlarging, re-opening, etc., of the drainage system as is provided for therein, and that no provision is made for a hearing with respect thereto, at which objections may be made either to the doing of the work or to the assessment to pay for it, and the contention of the plaintiffs in error is that the failure to provide for such notice and hearing renders the section unconstitutional for the reason that if enforced it would deprive them of their property without due process of law.

To this contention of invalidity it is replied that the section assailed is a legislative determination of the amount which should be assessed upon the lands of plaintiffs in error to pay for the preservation and repair of the drainage system, and that, therefore, due process of law did not require a new notice and opportunity to be heard before the work was determined upon or the assessment made,—this under authority of decisions of this Court, extending from *Spencer* v. *Merchant*, 125 U. S. 345, to *Branson* v. *Bush*, 251 U. S. 182, 189.

The Supreme Court of Iowa held the statute and assessment both valid, and a writ of error brings the case here for review.

The contention that a new notice and hearing was not required in this case by the due process provision of the Fourteenth Amendment is a sound one. We are dealing with the taxing power of the State of Iowa, exerted through the familiar agency of a regularly organized drainage district, which it is admitted, properly included, and by the system of drainage adopted benefited, the lands of the plaintiffs in error. It is admitted also that their lands were lawfully assessed to pay for the original drainage construction in the same proportion to benefits as that which was applied in this case to the cost of the improvements and repairs. Thus *Myles Salt Company* v. *Board of Commissioners*, 239 U. S. 478, and *Gast Realty & Investment Company* v. *Schneider Granite Company*, 240 U. S. 55, which are much relied upon, are plainly inapplicable.

The provision of the section assailed, that the cost of repairs shall be assessed upon the lands of the District in the same proportion that the original cost was assessed, since it only requires a simple calculation to determine the amount of each assessment when the cost of the improvement is once determined, is a legislative declaration that the lands will be benefited, and that in such case notice and hearing before such a legislative determination is not necessary, is settled by many decisions of this Court, among others, *Hagar* v. *Reclamation District*, 111 U. S. 701, 708; *Spencer* v. *Merchant*, 125 U. S. 345; *Embree* v. *Kansas City*, 240 U. S. 242, 250; *Wagner* v. *Leser*, 239 U. S. 207, 217, 218; *Houck* v. *Little River District*, 239 U. S. 254, 265, and *Branson* v. *Bush*, 251 U. S. 182, 189.

The only possible source of objection remaining is the committing to the Board of Supervisors the power to determine, without notice

and hearing, when repairs are necessary and the extent of them. But these are details of State administration with which the Federal authority will not interfere, except, possibly, to prevent confiscation or spoliation of which there is no suggestion in this case. *Davidson* v. *New Orleans*, 96 U. S. 97, 106, and cases cited, *supra*.

The propriety of resorting to such a practice—process of law applicable to such a case—is commended to us by the comment of the Supreme Court of Iowa, in deciding this case, saying:

"The duty [to keep the drainage system open and in repair] is one which is continuous, calling for supervision from day to day, and month to month, or in the language of the statute 'at all times.' The work to be done may involve considerable expense or it may be a succession of petty repairs, each of which is comparatively inexpensive. To require that in each case the board must advertise and seek the lowest bidder [and hold hearings with respect to it] would be to hamper and prevent its action without corresponding benefit to the public."

It is not necessary that we should consider whether a case can be imagined in which the ditches of a district might be enlarged, deepened, widened and lengthened to an extent such as to constitute a new construction and a new taking of property, which would require a further notice and hearing before a new assessment for it could be constitutionally imposed, for we have no such case here. There was some widening of the ditches for the purpose of securing a better angle of repose for the sides and some slight widening and deepening of the bottom at various points for the purpose of getting a better fall and outlet for the water, but we quite agree with the two state courts that the changes made were of a character and extent fairly within the scope of a cleaning, alteration and repair of the ditch system and necessary to promote its usefulness.

While the principles of law applicable to this proceeding are well settled we have preferred to again refer thus briefly to the controlling cases rather than to dismiss the petition in error.

It results that the motion to dismiss will be overruled and the judgment of the Supreme Court of Iowa

Affirmed.

Mr. Justice McReynolds concurs in result.